

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

MEYALLI AGUIRRE,

Plaintiff,

v.

No. D-202-CV-2017-08780

SBM, and ARCY WILSON,

Defendants.

COMPLAINT FOR DAMAGES AND NOTICE OF APPEAL

Meyalli Aguirre, by and through her attorneys Valdez and White Law Firm, LLC (Timothy L. White), for her claims against the Defendant, states:

1. This is an action for damages arising from defendant's discrimination against Meyalli Aguirre due to her disability, physical or mental handicap or serious medical condition. Meyalli was fired after informing her supervisor of her diagnosis of fibromyalgia, in violation of the New Mexico Human Rights Act, NMSA 28-1-7 et seq. (the NMHRA).

2. Jurisdiction and venue are proper in this court as all acts complained of occurred in New Mexico and defendant is the corporate body statutorily authorized to sue or be sued pursuant to NMSA 21-7-4, and a "person" as defined by the NMHRA.

3. Pursuant to Rule 1-004(H)(1)(b) and (c), and 1-004(L) the New Mexico Attorney General has been served with a copy of the original complaint in this matter and a duly issued summons.

4. Defendant SBM was at all relevant times an employer as defined in

EXHIBIT A

the NMHRA, having at least four employees.

5. Plaintiff has satisfied all applicable administrative requirements before filing this lawsuit. Plaintiff received her Order of Non-determination on or about September 12, 2017.

6. Plaintiff was terminated on February 22, 2017 because she is a qualified individual with a disability, fibromyalgia, and defendant refused to accommodate her disability.

7. Plaintiff was a cleaner for AVM at Intel in Rio Rancho from April 2015 until November 30, 2016.

8. AVM had accommodated Plaintiff's disability through the Family Medical Leave Act.

9. AVM was purchased by, or taken over by, SBM in late 2016, requiring all current AVM employees to reapply for positions through SBM.

10. Plaintiff reapplied for her position on November 19, 2016.

11. Plaintiff met with Jeremy, who appeared to be a hiring manager, for approximately thirty (30) minutes, specifically informing him of her disability.

12. Jeremy told Plaintiff about her disability, "Don't worry about it. You have a future with us."

11. Plaintiff inquired as to whether or not she needed to provide new paperwork from her doctor confirming her disability, but was told by Jeremy that a note from Plaintiff's doctor with her diagnosis would suffice.

12. Plaintiff was also taken to speak with a woman, presumably another hiring manager, who concurred with Jeremy that Plaintiff only needed to provide a note from her doctor with her diagnosis.

13. Plaintiff was hired and began working for SBM on December 1, 2016.

14. Plaintiff was notified by Arcy Wilson on January 18, 2017 that she would be put on unpaid leave immediately and until Plaintiff provided new paperwork from her doctor regarding her disability. She also provided Plaintiff with a Family Medical Leave Act packet to complete and return with the paperwork for her doctor.

15. Plaintiff contacted her doctor to schedule an appointment, however, her doctor could not see her until February 10, 2017. Plaintiff remained on unpaid leave during this time.

16. Plaintiff attended the doctor appointment on February 10, 2017, then faxed the new paperwork to SBM that same day. Plaintiff noted that the paperwork was identical to what she had already provided SBM.

17. Arcy Wilson contacted Plaintiff on February 22, 2017 to do a task analysis. She asked Plaintiff questions about "percentages of tasks," but Plaintiff told Wilson that she did not understand the questions. Wilson continued and told Plaintiff that she was only able to do twenty-three percent (23%) of her job duties.

18. Plaintiff reminded Wilson that she had been doing this same job for the previous year and eight months and that she had been told by Jeremy not to worry about her medical condition because she, "has a future with SBM."

19. Wilson told Plaintiff, "I'm sorry that you were misinformed. If I had been there, I wouldn't have hired you."

20. Wilson then terminated Plaintiff's employment effective immediately.

**COUNT I - DISCRIMINATION ON THE BASIS OF PHYSICAL HANDICAP AND/OR
SERIOUS MEDICAL CONDITION IN VIOLATION OF THE NEW MEXICO HUMAN RIGHTS
ACT**

21. Plaintiff incorporates by reference the factual allegations of each of the preceding paragraphs.

22. Plaintiff has a physical handicap or serious medical condition as defined by the New Mexico Human Rights Act, or was regarded by defendant as having such a physical handicap or serious medical condition.

23. Plaintiff was qualified for the position she was performing, as described above, with or without a reasonable accommodation.

24. Defendant discriminated against plaintiff by refusing plaintiff a reasonable accommodation.

25. Plaintiff has suffered an adverse employment action due to her termination.

26. Plaintiff's termination was due to her disability, fibromyalgia, which is a physical handicap and/or serious medical condition.

27. Plaintiff has been damaged as a result of this discrimination described above in the form of back and front pay, in the form of all compensatory damages allowed by law, attorneys fees, costs and expenses incurred in this action and for prejudgment and post-judgment interest as allowed by law, and for such other relief as the court considers proper.

REQUESTED FOR RELIEF

For the reasons set forth in this complaint, Plaintiff respectfully requests that the Court enter judgment as follows:

1. Against defendant for all lawfully recoverable compensatory damages in amount to be determined by the jury;
2. Against defendant for costs, expenses and attorneys' fees; and
3. For such other relief as the Court finds plaintiff entitled.

Respectfully submitted,

Valdez and White Law Firm, LLC

By: /s/ Timothy L. White

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COURT ANNEXED ARBITRATION CERTIFICATE

Plaintiff, by and through her attorneys, Valdez and White Law Firm, LLC (Timothy L. White), pursuant to Second Judicial District Local Rule 2-603, certifies that this party seeks relief **in excess** of twenty five thousand dollars (\$25,000.00) exclusive of punitive damages, interest, costs and attorney's fees.

Respectfully submitted,

VALDEZ AND WHITE LAW FIRM, LLC

By: /s/ Timothy L. White

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Attorneys for Plaintiff